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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,143	11/15/2003	James A. Napier	000129-0001	2369

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EXAMINER	
CHAPMAN, JEANETTE E	
ART UNIT	**PAPER NUMBER**
3635	

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/714,143	NAPIER, JAMES A.	
	Examiner	Art Unit	
	Chapman E. Jeanette	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejection under this section made in this office action.

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30-33, 35-38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al (5970661). Bishop et al discloses a climate control structure comprising:

- A collapsible structure interchangeably transformable between first and second storage positions;
- The portion defining a releasable climate control unit receiving aperture adjacent ref. no. 33; see figure 1 and 5; alternatively, the base reference discloses a portion defining a pliant resealable climate control unit-receiving aperture
- A climate control unit 16 reversible attachable with the collapsible structure for use in the inhabitable configuration;
- The climate control unit conditions the air within the enclosure of the collapsible structure; the climate control unit is a (mechanical) air conditioner
- The air is cooled;
- The aperture comprises a drawstring or elastic cord/restraining member for engaging the climate control unit to form a weather resistant barrier between the exterior and interior of the building; see column 2, lines 1-32;

- The dwelling/adapter is constructed of fabric; this includes cotton and nylon and combinations thereof
- A tent adaptor comprising:
    - A flange 39 having a front and back and at least a portion affixed to a tent;
    - A boot/support member 33 having first and second ends defining a longitudinally extending aperture there between; the boot 33 affixable at the first end perpendicular to the flange 39 affixing a climate control unit to a tent;
    - The second end 35/37 of the boot includes an elastic edge/restraining member; see column 2, lines 1-32; the second end has a closure/restraining member for closing the aperture at the second end
    - The support member 33 is made adjustable by the elastic/drawstring at the second end, holding the climate control unit at a predetermined distance in relation to the dwelling
    - A climate control unit carrier 39

35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 34 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al in view of Laiti (6796896).

The dwelling/adapter is constructed of fabric; this includes cotton and nylon and combinations thereof; the specific type of material of choice has been considered a matter of choice; one of ordinary skill in the art would have appreciated all known and available materials and would have selected any one commensurate with the intended use, function, purpose and scope of the intended collapsible structure;

Climate control units are manufactured to produce warm and cold air from a single unit; this fact is commonly and well known today. Laiti teaches an environmental control unit which may be an air conditioner or an air pump; air pumps are commonly known to produce warm and cold air. It would have been obvious to one of ordinary skill in the art to modify Bishop et al to include a means to create hot or cold air in order to provide a comfortable environment for the housing when employed outside in various weather conditions.

Claims 21-22, 24-25,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al in view of Heisler et al (5765584). Heisler discloses a climate control structure comprising:

- A tent with the capability of having a collapsible istrcutre interchangeably transformable between first and second storage positions; the second inhabitable configuration defines a predetermined shape
- An opening capable of receiving a climate control unit which would provide high low ventilation; see abstract and drawing figures 4A-7B

- Retention of the predetermined shape in the second inhabitable configuration is independent of the climate control unit

In view of the above, it would have been obvious to one of ordinary skill in the at to modify Bishop to include a self retaining structure as shown by Heisler without the use of the climate control unit in order to use the tent when the climate control unit is not needed.

Claims 22, 26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al in view of Heisler and further in view of Laiti (6796896). See rejection above, particularly for the material of construction. Laiti is applied in the same manner.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al..

The straps is viewed as an alternative fastening or holding means for the climate control unit. The significance or relevancy is not seen as critical. Bishops boot and flange is holding his unit just as well as any straps. Nothing is seen as structurally optimal in using the straps over the boot/flange/carrier of Bishop. Nothing critically significant is disclosed regarding this fastener over another except that it is used to secure the control unit to the collapsible structure. One of ordinary skill in the art would have appreciated that the straps are within the scope of the invention to Bishop and that one of ordinary skill would have been able to select any known and available connection means capable of providing the intended use and function of the device.

Response to Arguments

Applicant's arguments filed 8/14/06 have been fully considered but they are not persuasive. Applicant has claimed almost all known materials. Breathable plastics or plastics allowing ventilation are well known in the art of tents. Sun blocking or non-sun blocking fabrics or fabrics with some type of light prohibition properties are also well known in the art to be made of plastic cotton, leather or combinations thereof. Further Bishop does not state that one cannot use plastic films and other impermeable sheets for the material of constructions. The claims do not preclude or distinguish a structure that can maintain its shape without the airflow from the fan versus one without. The secondary references have not been bodily incorporated. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Laiti was cited for its teaching of different types of climate control units. Motivation was given for combining the teaching of Laiti with that of Bishop. Heisler teaches some of the recited features to house and hold the climate control unit. Motivation is given above.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. Applicant the references are not combinable because climate control units may be used in any dwelling desired. Many are portable and various means are employed to secure them to the structure.

It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

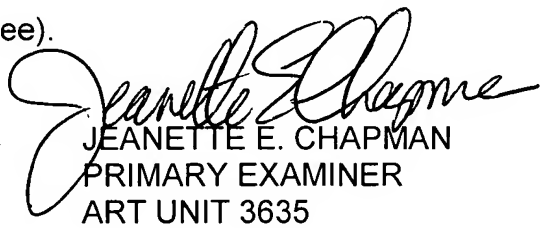
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEANETTE E. CHAPMAN
PRIMARY EXAMINER
ART UNIT 3635